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U.S. Citizenship and Immigration Services

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MAY 11 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 00 138 52233

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 45-year old citizen of Uzbekistan who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The petitioner indicates that she last entered the United States as a B-2 nonimmigrant visitor on November 3, 1995.

On April 17, 2000, the petitioner filed a Form I-360 claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

On November 28, 2000 the director provided the petitioner with a Notice of Intent to Deny the petition, finding that the petitioner had failed to establish that she was the spouse of a citizen or lawful permanent resident of the United States, that she had entered into her marriage in good faith, and that her deportation would constitute an extreme hardship.

The petitioner responded to the director's Notice of Intent to Deny the petition but failed to answer four questions posed to the petitioner, including how many times the petitioner and her spouse had been married, and when and where she had resided with her citizen spouse.

The director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

On appeal, counsel for the petitioner submits a brief asserting that the petitioner had provided sufficient evidence to establish that her marriage was entered into in good faith and that she was battered during her residence with a United States citizen.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

> (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
>
> (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

> A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;

> (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
>
> * * *
>
> (D) Has resided . . . with the citizen or lawful permanent resident spouse;
>
> (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
>
> (F) Is a person of good moral character; [and]
>
> * * *
>
> (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The director denied the petition, in part, because the petitioner failed to establish that she was the spouse of a citizen or lawful permanent resident of the United States. The petitioner submitted copies of her 1999 federal income tax return showing that she had filed as "head of household," a filing status reserved for single parents. The director asked the petitioner how many times she and her citizen spouse had been married and the petitioner failed to respond. On appeal, new counsel for the petitioner states that the failure to answer the questions could be attributed to the ineffective assistance of counsel. Nonetheless, the questions were never answered.

According to the evidence on the record, the petitioner wed her first husband, [redacted] on November 4, 1985 and divorced on June 3, 1997. According to the evidence, the petitioner wed her second spouse, [redacted] a United States citizen, on February 4, 1998 on Staten Island, New York. The evidence indicates that [redacted] filed a Form I-130 on the petitioner's behalf and that the petitioner filed an application for adjustment of status that was denied on August 29, 2000 for lack of prosecution. According to the evidence on the Form I-130, [redacted] had wed only once. Nonetheless, the petitioner failed to adequately explain why she had not responded to the director's questions regarding how many times she and her second husband had been wed.

At the time the petitioner filed the Form I-360 petition, the pertinent regulation at 8 C.F.R. § 204.2(c)(1)(ii) provided:

> The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past 2 years and the battering or extreme cruelty by the United States citizen spouse. *Id.* Section 1503(b), 114 Stat. at 1520-21. Pub.

L. 106-386 does not specify an effective date for the amendments made by section 1503. This lack of an effective date strongly suggests that the amendments entered into force on the date of enactment. *Johnson v. United States*, 529 U.S. 694, 702 (2000); *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991). If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Matter of George and Lopez-Alvarez*, 11 I&N Dec. 419 (BIA 1965); *Matter of Leveque*, 12 I&N Dec. 633 (BIA 1968). Considering the Form I-360 petition under the 2000 amendments to the Act, the petitioner has not overcome the objection of the director to approve the petition. By failing to respond to the director's questions regarding prior marriages, the record is insufficient to establish that the petitioner was lawfully wed to a citizen or lawful permanent resident of the United States within two years of filing the instant petition.

The director denied the petition, in part, finding that the petitioner had failed to establish that she had resided with her citizen spouse. According to the evidence on the record, the petitioner filed her 1999 federal tax return as head of household, a category for single individuals. The director requested an explanation for this discrepancy but received none. The record also contains a copy of a lease dated August 1, 1999, listing the petitioner and her citizen spouse as tenants but it is unsigned. The record contains a copy of a renewal lease dated April 1, 1999 that is signed but the dates appear altered. The evidence is insufficient to establish that the petitioner resided with her citizen spouse.

Beyond the decision of the director, the petitioner has failed to establish that she was battered by or subjected to extreme cruelty by her citizen spouse. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

> *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse. The evidence consists of the following:

- The petitioner's letter stating that after she married, she found out that her citizen spouse is mentally ill.
- Photographs of the petitioner with a black eye.
- Letters of friends stating that the petitioner had been abused by her citizen spouse.

- A letter dated June 13,'2000 written by psychiatris[redacted] stating that the petitioner had been under care for emotional problems.

Since the appeal will be dismissed for the reasons stated above, this issue need not be discussed further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.